IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

CRL.A.No. 1648 of 2003

SC.115/2000 ON THE FILE OF THE COURT OF THE ADDL. DISTRICT AND SESSIONS JUDGE, FAST TRACK (ADHOC II), KOZHIKODE.

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APPELLANT: ACCUSED:

P.R.MANIYAN, S/O. RAGHAVAN,
PUTHENPURACKAL HOUSE, CHIPPILATHODE,
NOORAMTHODU, ADIVARAM, THAMARASSERY.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT & STATE:

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1. THE SUB INSPECTOR OF POLICE,
KOORACHUNDU.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY P.P.SRI.THOMAS JOHN AMBOOKKAN FOR R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Crl.M.A.No. 10061/2003 in Crl.A.No.1648 /2003

Dismissed.

17th September, 2007

Sd/-K. Thankappan,
Judge.

mn.

K.Thankappan,J.

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Crl.L.P.No. /2006

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Judgment

-12-2006

K. Thankappan, J.

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Crl.A. No. 1648 of 2003

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Dated this the 17th day of September, 2007

JUDGMENT

Accused in S.C.No.115/2000 on the file of the Court of the Addl. District and Sessions Judge, Fast Track (Adhoc II), Kozhikode challenges the judgment of the trial court by which the appellant was found guilty under sections 417, 376, 496 and 406 IPC. The prosecution case against the appellant was that the appellant engaged in sexual intercourse with PW1 promising to marry her by concealing his earlier marriage with PW7 and with the fraudulent intention of cheating PW1 registered the marriage of the appellant and the defacto-complainant on 29-11-1994 in Koorachundu Panchayat Office and misappropriated the entire gold ornaments of the defacto-complainant and thereby committed the offences. To prove the case against the appellant, PWs.1 to 14 were examined and Exts.P1 to P12 were examined. When the appellant was questioned, he denied the allegation. On the side of the defence, the appellant was examined as DW1 and Exts.D1 to D3 were marked. After considering the entire evidence, the

trial court found the appellant has committed the offences punishable under sections 417, 406, 376, 496 and 406 IPC and he was convicted thereunder and sentenced to undergo rigorous imprisonment for one year for the offence under section 417 IPC, sentenced to undergo rigorous imprisonment for two years for the offence under section 406 IPC, sentenced to undergo rigorous imprisonment for seven years and to pay a fine of RS.25,000/- and in default to undergo rigorous imprisonment for 1 ½ years for the offence under section 376 IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.10,000/- and in default to undergo rigorous imprisonment for six months for the offence under section 496 IPC. The trial court also ordered that if the fine amount was realized, Rs.30,000/- should be paid to PW1 under section 357 Cr.P.C.

2. The learned counsel for the appellant contends that the trial court has mis-read the entire evidence adduced by the prosecution, as the evidence adduced by the prosecution is not sufficient to hold that the appellant had committed the offence alleged by the prosecution. It is also contended that the trial court has committed serious error in finding that the prosecution had succeeded in proving that having entered in a fraudulent marriage the accused had sexual intercourse with PW1 on making her to believe that he was the lawful husband of her, as the appellant had married

PW1 under the provisions of Hindu Marriage Act and the said marriage was registered in the Panchayat. According to the learned counsel, the investigation made by the police under section 494, 495 and 496 IPC is irregular and hence the charge cannot be tried by the court below.

3. The specific case alleged against the appellant as per the complaint filed by PW1 is that the appellant engaged in sexual intercourse with PW1 promising to marry her by concealing his earlier marriage and with the fraudulent intention of cheating PW1, registered the marriage of the appellant and PW1 in the Panchayat Office without conducting marriage as per custom or law and misappropriated the entire gold ornaments of PW1. Though it is alleged that the appellant engaged in sexual intercourse with PW1, date on which the appellant engaged in sexual intercourse with PW1 was not mentioned. In the complaint it is stated that after the marriage they started their residence at Thonikadavu and when she was carrying eight months, the appellant abandoned her. It is also stated that at the time of her marriage, her father has given 5 sovereigns of gold ornaments and the appellant had misappropriated the same. It is further stated that when her relatives enquired about the appellant, they learnt that prior to his relationship with her, he had married PW7 and in that

relationship the appellant had two children. On the basis of the above complaint, the matter was referred under section 156(3) of the Cr.P.C. for investigation. PW10 S.I. of Police, Koorachund Police Station took up the investigation of the case and questioned the witnesses. PW12 C.I. of Police Perambra continued the investigation and filed charge against the appellant. To prove the charge against the appellant the trial court has mainly relied on the evidence of PWs.1 and 2, victim and her uncle respectively and PW7, wife of the appellant. The trial court also relied on the evidence of PW14, Secretary, Koorachund Panchayat. Pws.3 and 4 are the doctors who examined the appellant to prove his potency. After considering the evidence, the trial court found that the prosecution had succeeded in proving the charge against the appellant and he was found guilty of the charge.

4. PW1 in her evidence stated that the appellant promised to marry her and by believing the words of the appellant she shared her bed with the appellant. She also stated that in the year 1994 the appellant married her as per the custom prevailing in their community and the marriage was registered with the Koorachund Panchayat. She also stated that the appellant had not disclosed his earlier marriage when he promised to marry her. She further stated that in the above wed-lock a child was born to them. She

admitted that "വിവാഹത്തിനു ഒരു വർഷം മുമ്പ് മുതലാണ് പ്രതിയുമായി ശാരീരിക ബന്ധത്തിൽ ഏർപ്പെടാൻ തുടങ്ങിയത്. ആകാലത്തു ഈ ബന്ധത്തെപ്പറ്റി ഞാൻ വീട്ടുകാരോട് പറഞ്ഞിട്ടില്ല . ....പ്രതി പറഞ്ഞ വിലാസത്തിൽ പോയി അച്ഛനും അമ്മയും അന്വേഷണം ഒന്നും നടത്തിയില്ല . അച്ഛനും അമ്മയും പ്രതിയെപ്പറ്റി അന്വേഷിക്കുന്നത് പ്രതി എന്നെ ഉപേഷിച്ചു പോയ ശേഷം ആണ്. പ്രതി എന്നെ ഉപേഷിച്ചു പോകുന്നതു വരേക്ക് പ്രതിയെ കൂറിച്ച് അച്ഛനും അമ്മയും അന്വേഷിച്ചിട്ടില്ല." She also admitted that the marriage between the appellant and herself was conducted after having consent from her parents and relations. If that be so, the marriage was an arranged one. In her deposition she stated that the appellant concealed his earlier marriage for having sexual intercourse with her. In this context, the evidence of PW2 is relevant. PW2 stated that the marriage between the appellant and PW1was conducted as per the customs prevalent in the community and the marriage was registered in the Panchayat and he was the witness of the marriage registered in the Panchayat. He admitted that the whereabouts of the appellant was enquired only in the year 1996. The evidence of PW7 is also relevant. PW7 was examined to prove the earlier marriage of the appellant. She stated that the appellant was her husband and he had married her about 12 years back. She stated that there was no

document to show that the marriage was conducted between the appellant and herself. The further case of PW7 was that "കല്ല്യാണം നടന്നിട്ടില്ല . സ്നേഹിച്ച് ഞാനും മണിയനും ഭാര്യ ഭർത്താക്കന്മാരായി ജീവിച്ചു വരികയാണ്.... ഞങ്ങൾ ഇപ്പോഴും ഭാര്യഭർത്താക്കന്മാരായി താമസിച്ച് വരികയാണ്." The prosecution has tried to rely on Ext.P7 statement alleged to have been given by PW7 when she was questioned by the police. It is relevant to note that there is no legal evidence adduced by PW7 to show that she is the legally wedded wife of the appellant. She admitted that she married one Rajan in the year 1992. She was declared hostile to the prosecution. None of the investigating officers including PW13 has not given any evidence regarding the legal marriage between the appellant and PW7. If that be so, the finding entered by the trial court that the appellant married PW7 and the above fact was concealed by the appellant and thereby committed the offence punishable under section 417 is not correct.

5. The next question to be considered is whether the appellant has committed the offence punishable under section 406 IPC?

6. The trial court found that the testimony of PW1 that having entered a fraudulent marriage with PW1, the appellant had misappropriated five sovereigns of gold ornaments from PW1. When PW1 was examined,

she stated that she had given gold ornaments to the appellant for purchasing property. If that be so, there is no question of misappropriation of gold ornaments of PW1. It is relevant to note that after the marriage both the appellant and PW1 were residing near the paternal house of PW1 and subsequently they shifted their residence in a hut and they were living together more than two years and in the above wed-lock a child was born. In the above circumstances, the finding of the trial court that the appellant has committed the offence punishable under section 406 IPC is not sustainable.

7. The next question to be considered is whether the appellant had committed the offence punishable under section 496 IPC?

8. As per section 496 IPC, whoever dishonestly or with fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished. PW1 stated that

ഇതിനിടയിൽ കൂരചുണ്ട് പഞ്ചായത്തിൽ വെച്ച് പ്രതി എന്നെ register വിവാഹം കഴിച്ചു. 1994 –ൽ ഒരു 29 തിയ്യതി ആയിരുന്നു വിവാഹം. വിവാഹം നടന്ന മാസം ഓർമ്മയില്ല. അന്നുതന്നെ വീട്ടിൽവെച്ച് ജാത്യാചാര പ്രകാരം ഞങ്ങളുടെ വിവാഹം നടത്തി.” It has come out in evidence that the marriage between the appellant and PW1 was registered in the Koorachund Panchayat Office on

13-11-1994. In the above circumstances, the finding of the trial court that the appellant has committed the offence punishable under section 496 IPC is not sustainable.

9. The next question to be considered is that the appellant has committed the offence punishable under section 376 IPC or not?

10. The prosecution case in this regard is that the appellant engaged in sexual intercourse with PW1 promising to marry her by concealing his earlier marriage with PW7. The further case is that the marriage has not been taken place as promised and hence the consent obtained by the appellant for sexual intercourse with PW1 is against the provisions of 376 IPC. In this context, the evidence of PW1 would show that during the period of their sexual intercourse, the appellant expressed his intention to marry PW1 and the marriage was taken place. According to PW1, the marriage was conducted as per the custom prevailing in their community in her house in the presence of her relatives. It has also come out in evidence that the appellant tied 'thali" in her neck. Ext.P2 certificate would show that the marriage between the appellant and PW1 was conducted as per the provisions of Hindu Marriage Act. Apart from the above, it is an admitted case of the prosecution that in their wedlock a child was born and both the appellant and PW2 were living as husband and wife.

In the circumstances, the finding of the trial court that the appellant had committed offence punishable under section 376 IPC is not sustainable.

11. It has also come out in evidence that whatever be the status of the relationship between the appellant and PW7, the above fact was known to PW1 and her relatives even prior to 1993. In this context, the evidence of DW1 none else the mother of PW1 would clearly indicate that PW1 was aware about the relationship between the appellant and PW7. In Chief DW1 stated that പുഷ്പയും കുട്ടികളും പ്രതി അവിടെ താമസിക്കുമ്പോൾ പ്രതിയുടെ പണിസ്ഥലത്തു വന്നത് ഞാൻ കണ്ടിട്ടുണ്ട്. പുഷ്പയുടെ കുട്ടികളുടെ അച്ഛൻ പ്രതി ആണെന്നു എനിക്കറിയാം . In this context, this Court has also to be noted that the enquiry regarding the whereabouts of the appellant has been made by the people of PW1 only after 1996. In the above circumstances, this Court is of the view the findings entered against the appellant under section 376 is not sustainable .

12. In the light of the above findings entered by this Court and the conclusions arrived at by this Court in this judgment, the entire findings entered by the trial court are not justifiable. Hence, the findings entered against the appellants are set aside and the appellant was found not guilty of of the offences alleged against him. Accordingly, the appeal is allowed and

the appellant is acquitted of all the charges. Bail bond executed by the appellant shall stand cancelled.

K. Thankappan,
Judge.

Mn

K.Thankappan, J.

Crl.A.No. 1648 of 2003

Judgement

17-9-2007